

“We make a living by what we get, but we make a life by what we give.”

Winston Churchill

Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, delivered a speech on stewardship at the LSE in London. Edwin emphasises that stewardship is important and that long-term thinking and shareholder engagement helps markets function well.

UK TPR - FCA further extends the period to make notifications to 30 May

The FCA is extending to **30 May 2019** the deadline for inbound passporting EEA firms and funds to notify it of a wish to enter the UK's Temporary Permissions Regime - updates to already made notifications can be made no later than 16 May 2019.

Following the UK Government's agreement with the

European Council on 11 April 2019 to delay to the date of the UK's departure from the EU to no later than 31 October 2019, the FCA has updated its TPR webpage to note:

- it will extend the notification window for the TPR until the end of 30 May 2019, and
- If a fund manager wishes to update its notification as a result of the extension, it should email recognisedcis@fca.org.uk by no later than the end of 16 May 2019 to confirm this. It should also include its FRN in its communication.

The original deadline by which firms and funds who wish to enter into the UK's temporary permissions regime (TPR) must notify the FCA was 28 March 2019. This was subsequently changed to 11 April 2019 and has now been further extended to 30 May 2019.

FCA sets out its priorities for 2019/20

The FCA has published its Business Plan for 2019/20, which outlines the key priorities for the coming year.

As the UK finalises preparations to leave the European Union, the immediate priority will remain supporting an orderly transition post-exit. The FCA will also continue to play a leading role in shaping the global regulatory framework working with other national regulators and international bodies.

The Business Plan outlines four ongoing cross-sector priorities:

- Work on firms' culture and governance, including extending the Senior Managers and Certification Regime to all firms.
- Ensuring the fair treatment of firms' existing customers by monitoring firms' practices, including the information they give prospective and current customers.
- Developing the work being done on operational resilience, which will play a vital role in protecting the UK's financial system.
- Combating financial crime and improving anti-money laundering practices, by enhancing the use of technology and data, as well as engaging with multiple agencies and government bodies.

The plan also sets out three additional cross-sector priorities, which have longer time horizons:

- the future of regulation
- ensuring innovation and the use of data work in consumers' interests
- examining the intergenerational challenge in financial services

FCA official pledges to use criminal powers against dirty money

A top official at the UK's financial watchdog has fired a warning shot to banks by promising to use its criminal powers in cases where City of London firms launder dirty money.

Flagging a “large number of investigations”, Mark Steward, the head of enforcement at the Financial Conduct Authority, pledged to use the “full intention” of rules that cover the laundering of ill-gotten gains. These rules were recently enhanced to allow the watchdog to use both its criminal and regulatory powers.

His comments come as concern grows that the City of London is acting as a global laundromat, washing hundreds of billions of pounds in dirty money from around the world, according to official estimates.

“We have a large number of investigations on foot, some of them entering important phases, tackling some very serious issues, including suspected financial crime in our markets, suspected false or misleading statements by listed issuers, and suspected significant AML system and control issues under the Money Laundering Regulations,” said Mr Steward in a speech at an event on Thursday.

Partly contested cases, the pipeline and AML investigations

Mark Steward, Director of Enforcement and Market Oversight at the FCA, delivered a speech at the Global Investigations Review Live event in London.

Key highlights included:

- Partly contested cases avoid a ‘deal-making’ approach to the imposition of penalties and sanctions giving subjects an opportunity to test and challenge the FCA's penalties before the RDC, an independent FCA Board committee, without losing any cooperation benefit.
- Firms will be held accountable for foreseeable harm.
- The FCA is investigating suspected breaches of the Money Laundering Regulations that might give rise to either criminal or civil proceedings, giving effect to the full intention of the Money Laundering Regulations which provides for criminal prosecutions.

UK Financial Conduct Authority and Australian Securities and Investments Commission agree to strengthen cooperation post-Brexit

The FCA and the ASIC announced they have agreed two Memoranda of Understanding to ensure there is continuity once the UK leaves the European Union. The MoUs cover trade repositories and alternative investment funds (AIFs).

These agreements will provide reassurance by ensuring arrangements are in place for cross-border cooperation between the FCA and ASIC. The FCA and ASIC also support the continuity of existing equivalence decisions to provide certainty to businesses post-Brexit.

Andrew Bailey, Chief Executive, FCA said:

“The FCA and ASIC have always had a strong relationship, which will continue after Brexit. The MoUs we have agreed today will ensure the FCA and ASIC have uninterrupted exchange of information and can supervise cross-border activity of firms. They provide a strong signal to the markets that the UK will continue to play an important role after Brexit. The MoUs will also provide much-needed assurance to our regulated stakeholders.”

“We also support the continuity of existing equivalence decisions which will minimise disruption for firms in the UK and Australia.”

The future of financial conduct regulation

A Chief Executive of the FCA spoke on the future of the Financial Conduct Regulation at Bloomberg, London last week. He said that there should be a debate about the future of regulation but this needs to be in a public interest framework. The public interest objectives that are specific to the conduct of financial services, sit within the very broad landscape of all public policy and public interests. And that means there are inevitably boundary issues to be dealt with, for instance with social policy in areas such as benefits, pension, social welfare and housing policy.

The FCA will also undertake further work to examine the role of their principles. Some parties have expressed concern that their regulatory framework, including their Principles for Businesses, may not be sufficient or applied effectively enough to prevent harm to consumers. Hence the suggestion of a duty of care to reduce that harm. Others believe that their existing set of principles and rules are sufficient and they, in effect, impose the same requirement on firms as a duty of care would. They intend, as part of considering the future of regulation, to undertake further work to examine the role of principles, and will consider the most efficient and proportionate options for achieving the substance of a duty of care. They say will continue to engage broadly on this.

The Financial Conduct Authority (FCA) publishes feedback statement on Duty of Care

As a result of the feedback the FCA received and its early analysis, it has identified options for change that are most likely to address potential deficiencies in consumer protection.

These are:

- reviewing how it applies the regulatory framework – in particular, its application of the Principles in its authorisations, supervisory and enforcement functions, and how transparently it communicates with firms about this
- new/revised Principles to strengthen and clarify firms’ duties to consumers, including considering a potential private right of action for Principles breaches

Andrew Bailey, Chief Executive of the FCA said:

‘I’m pleased that so many people shared their views with us as part of this process. Inevitably, there were a range of opinions about what would secure the right level of protection for consumers. Given their long-lasting impact, we now want to weigh-up possible changes, including whether reworking our Principles of Business is the right way forward. I will continue to push this forward as getting the right answer on this question is essential to the FCA delivering on its Mission.’

FCA statement on delay to publication of final rules for CFDs products and CFD-like options

The published a Paper in 2018, which proposed making the European Securities and Markets Authority’s (ESMA’s) temporary product intervention measures for CFDs permanent in the UK. The proposed interventions are the same in substance as ESMA’s, although they are also proposing to apply rules to closely substitutable CFD-like products.

They are still considering the consultation feedback and ESMA’s temporary restrictions continue to apply to FCA-authorized firms. Their final rules for CFDs would apply from the date that ESMA’s restrictions expire, if not earlier. Firms that sell, market, or distribute CFD-like options would be given at least two months to comply with new rules.

Firms must continue to comply with ESMA’s decision notice that imposes temporary restrictions on the marketing, distribution or sale of CFDs to retail clients. Should EU law cease to apply in the UK before ESMA’s decision notice expires, ESMA’s decision notices will continue to apply as part of UK law.

Towards more effective stewardship

Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, delivered a speech on stewardship at the LSE in London.

Key highlights included:

- Effective stewardship is important. Long-term thinking and shareholder engagement helps markets function well.
- Whilst progress has been made towards more effective stewardship, the overall evidence on whether and how stewardship is happening is mixed.
- We will consider how to build upon the baseline for stewardship established by implementation of the Revised Shareholder Rights Directive, in the context of the FRC’s revision of its Stewardship Code.

FCA publishes instructions for accessing and downloading FCA FITRS files

In March 2019 the FCA issued their Statements of Policy on the operation of the MiFID transparency regime, a Supervisory Statement and a Technical Communication outlining how they will operate the MiFID transparency regime, if the UK leaves the EU without an implementation period.

As set out in the Supervisory Statement (PDF), if the UK leaves the EU without a deal, the FCA will make FCA FITRS (FCA Financial Instruments Transparency System) available from exit day.

The FCA have published FCA FITRS - Instructions on access and download of full and delta transparency files (PDF) to enable firms to further their preparations.

FCA FITRS is not yet open to firms for testing; the FCA shall make an announcement when it is.

Enforcement cases

FCA fines bank £102.2 million for poor AML controls

The FCA has fined a well-known bank £102,163,200 for Anti-Money Laundering (AML) breaches in two higher risk areas of its business. This is the second largest financial penalty for AML controls failings ever imposed by the FCA.

The FCA found serious and sustained shortcomings in the bank's AML controls relating to customer due diligence and ongoing monitoring. The bank failed to establish and maintain risk-sensitive policies and procedures, and failed to ensure its UAE branches applied UK equivalent AML and counter-terrorist financing controls.

The FCA found significant shortcomings in the bank's own internal assessments of the adequacy of its AML controls, its approach towards identifying and mitigating material money laundering risks and its escalation of money laundering risks. These failings exposed the bank to the risk of breaching sanctions and increased the risk of them receiving and/or laundering the proceeds of crime.

The bank does not dispute the FCA's findings and exercised its right, under the FCA's partly contested case process, to ask the FCA's Regulatory Decisions Committee to assess the appropriate level of sanction. The bank's agreement to accept the FCA's findings meant it qualified for a 30% discount. Otherwise, the FCA would have imposed a financial penalty of £145,947,500.

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